Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

1. (Currently Amended) A method for adjusting data modulation at a subscriber unit, comprising:

receiving data at a transmitter for transmission, wherein the received data is received in data blocks from a higher layer ARQ mechanism;

formatting the received data into packets for transmission, wherein the packets being are smaller in size than the data blocks, and each packet having a particular type of encoding/data modulation;

appending an error check sequence for each packet;

transmitting the packets;

storing the packets for retransmission in a buffer memory incorporated into the transmitter;

monitoring a return channel for receipt of an acknowledgment for each packet that that packet has been received;

limiting the number of retransmissions to an operator-defined integer value;

clearing the buffer memory after the integer value is reached;

retransmitting an original or selectively modified packet at the transmitter, if an acknowledgment for that packet has not been received within a predetermined period of time;

collecting retransmission statistics;

adjusting the particular encoding/data modulation of each packet using the collected retransmission statistics; wherein if the collected retransmission statistics indicate a low number of retransmissions, a higher capacity encoding/data modulation scheme is selected as the particular encoding/data modulation and if the collected retransmission statistics indicate a high number of retransmissions, a lower capacity encoding/data modulation scheme is selected as the particular encoding/data modulation; and

combining the retransmitted original or selectively modified packet with the transmitted packets.

2.   (Original) The method of claim 1 wherein the particular type of encoding/data modulation is forward error correction (FEC).

3.   (Original) The method of claim 2 wherein the packets are transmitted using an orthogonal frequency division multiple access (OFDMA) air interface and the FEC encoding/data modulation adjusting is performed in addition to selective nulling of subchannels in an OFDMA set.

4.   (Original) The method of claim 1 wherein the packets are transmitted using a single carrier having a frequency domain equalization (SC-FDE) air interface.

5.   (Previously presented) The method of claim 1 wherein the return channel is a fast feedback channel when the packets are transmitted using a code division multiple access (CDMA) air interface.

6.   (Original) The method of claim 1 further comprising:
identifying a packet as having an unacceptable error rate responsive to receipt of a negative acknowledgment.

7-9   (Canceled).